



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF MAY 26, 2005**

CALL TO ORDER: Chairperson Harrison called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Harrison, Commissioners Chan, King (arrived 7:05 p.m.), Lorenz, Lydon, Sharma, and Weaver

ABSENT: None

STAFF PRESENT: Jeff Schwob, Planning Director
Larissa Seto, Senior Deputy City Attorney II
Norm Hughes, City Engineer
Barbara Meerjans, Associate Planner
Kathleen Livermore, Senior Planner
Cliff Nguyen, Planner II
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Minutes of April 28, 2005 were approved with the following correction:

Page 18, Commissioner Sharma quoting, "The ordinance will limit traffic congestion and air and water pollution by provideing the needed . . . "

CONSENT CALENDAR

It was agreed to add Items 9 and 10 to the Consent List.

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 2, 4, 5, 6, 7, 8, 9 AND 10.

A separate vote was taken on Item 9, Site 3. Commissioner Chan recused herself because she owned property within 300 feet of the site.

Chairperson Harrison asked that a condition be added to insure that no parking spaces would be lost (and, ideally, additional parking spaces would be created) during the development of the transit village.

Planning Director Schwob noted that the same comments had been heard from the public and it would be included in the recommendation.

Item 9. HOUSING ELEMENT PROGRAM 21 – to consider the following General Plan Amendment and Rezonings:

Site 3 (PLN2005-00215) The third site includes three Bay Area Rapid Transit (BART) parcels, which currently are developed with a BART Transit Station, elevated rails and surface parking lots. The site is located on the north side of Walnut Avenue, east of Civic

Center Drive and south of Mowry Avenue and contains a total of 19.6 acres. It is located in the Central Planning Area. Subarea A includes three parcels containing approximately 14 acres. The proposal is to add a Very High Residential (50-70 dwelling units per acre) designation to the existing Public Facilities/BART/Foot Trail/Study for Trail designation. A rezoning from P (Planned Development) District to P-2005-215 (Planned Development) District is proposed which allows mixed-use development provided the minimum density requirement is achieved and follows the R-3-70 District standards for the residential development. Subarea B consists of a 5.65-acre parcel that fronts on Mowry Avenue. The proposal for this Subarea is to change the existing land use designation from High Density Residential (35 – 50 dwellings per acre) to Very High Density Residential (50-70 dwellings per acre). A rezoning from R-3-50 (Multi-family Residential) District to P-2005-215 (Planned Development) District is proposed which allows mixed use development provided the mid-point density requirement is achieved and follows the R-3-70 District standards for the residential development. A Negative Declaration has been prepared and circulated for this project.

ADDENDUM TO STAFF REPORT

Correspondence: Correspondence has been received from The Colton Company, Catherine M. Behrens, M.D. and the Public Utilities Commission regarding the Program 21 sites for redesignation and rezoning:

The Colton Company and Dr. Behrens' comments related to (PLN2005-00215) and concerns over the potential impact from removal of parking spaces at the BART station should the property develop at the proposed residential densities. Currently, BART has a "No Net Loss" policy regarding development which means that any future expansion of facilities will result in no net loss of parking spaces. Further, staff recommends that additional language be added to ensure that parking is provided to accommodate any future development of the site to accommodate expansion and/or new uses, in accordance with City off-street parking standards.

The letter from the Public Utilities Commission relates to planning for safety where properties are located adjacent to or near the rail corridor in the County. The sites that are adjacent to or near the County's rail corridor includes the BART site (PLN2005-00215), the Osgood Road site (PLN2005-00217) and the Mission Boulevard site (PLN2004-00275). Planning for safety and pedestrian circulation typically occurs on all projects during Site Plan and Architectural Approval (SPAA) review of a specific project, and such would be the case with these sites.

MODIFICATION TO EXHIBIT "C" BART PROPERTIES (WALNUT & MOWRY AVENUE) PLANNED DISTRICT (P-2005-215)

Modify page 2, lines 3 and 4, as follows: ...account site access, and the interrelationship between residential and commercial uses both on and off-site, and appropriate parking to accommodate the needs of the Station as well as of the development. In addition to the Standards for...

HOLD SEPARATE PUBLIC HEARINGS ON SITES 1, 2, AND 4;

AND

RECOMMEND TO THE CITY COUNCIL THAT THE INITIAL STUDY CONDUCTED FOR SITES 1, 2, 3 AND 4 / PLNS 2005-00080, 2005-00217, AND 2005-00076 HAS EVALUATED THE POTENTIAL IMPACTS FOR REDESIGNATIONS AND REZONINGS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES, AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF DRAFT MITIGATED NEGATIVE DECLARATION FOR SITES 1, 2, AND 4 / PLNS 2005-00080, 2005-00217, AND 2005-00076 WITH ACCOMPANYING CERTIFICATE OF FEE EXEMPTION FINDING

THAT IT REFLECTS THE INDEPENDENT JUDGEMENT OF THE CITY OF FREMONT, AND FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT;

AND

RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF THE MITIGATION MONITORING AND REPORTING PROGRAM;

AND

FIND THAT GENERAL PLAN AMENDMENTS, THE REZONING TO PLANNED DISTRICTS (P-2005-80, AND P-2005-076) ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING ELEMENT CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THAT THE EXISTING COMMERCIAL SITES HAVE RELATIVELY UNIQUE FEATURES AND THAT THEIR DESIGNATION FOR HIGHER DENSITY RESIDENTIAL OR COMBINATION OF COMMERCIAL AND RESIDENTIAL DEVELOPMENTS REQUIRES SPECIFIC DESIGN CONSIDERATIONS TO ACHIEVE THESE OBJECTIVES; AND ARE IDENTIFIED IN THE HOUSING ELEMENT SUCH THAT THE PROPERTIES CAN BEST BE DEVELOPED AS PLANNED DISTRICTS;

AND

MAKE SEPARATE RECOMMENDATIONS FOR EACH SITE RECOMMENDING THAT THE CITY COUNCIL APPROVE EXHIBITS "A" (GENERAL PLAN AMENDMENTS), EXHIBITS "B" (REZONINGS), AND EXHIBITS "C" FOR THE PLANNED DISTRICTS P-2005-80, AND P-2005-76 FOR THE FOLLOWING SITES:

SITE 1 (PLN2005-00080) CONSISTS OF APPROXIMATELY 15.6 ACRES OF LAND ON THE SOUTH SIDE OF PASEO PADRE PARKWAY BETWEEN ARDENWOOD BOULEVARD AND TUPELO STREET IN THE NORTHERN PLAIN PLANNING AREA.

SITE 2 (PLN2005-00217) CONSISTS OF APPROXIMATELY 7.9 ACRES OF LAND (11 PARCELS) LOCATED ON THE WEST SIDE OF OSGOOD ROAD, NORTH OF BLACOW ROAD IN THE IRVINGTON PLANNING AREA.

SITE 4 (PLN2005-00076) CONSISTS OF APPROXIMATELY 2.43 ACRES OF LAND LOCATED ON THE ON MOUNT VERNON AVENUE AT MOWRY AVENUE IN THE CENTRAL PLANNING AREA.

IT WAS MOVED (WEAVER/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-0-1) THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON BE TAKEN ON ITEM 9, SITE 3:

The motion carried by the following vote:

AYES:	6 – Harrison, King, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	1 - Chan

IT WAS MOVED (WEAVER/LYDON) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 2, 4, 5, 6, 7, 8, 9, (Sites 1, 2 AND 4) AND 10.

- Item 2. ANDARY ENTERPRISES - 4995 Mowry Avenue – (PLN2003-00261)** - to consider a major amendment to a Planned District to add a new car wash facility and expand an existing convenience store to allow an eating establishment at an existing gasoline service station on

0.95 acre located in the Centerville Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project.

Pamela Metcalf, partial owner of a home on Donner Way, was relieved to see that a number of trees would be kept and added. This facility was located on one of four corners and she expressed concern about one of the corners near the residential neighborhood that "was fast becoming a used car lot. . . . The residents seem to be getting short shrift."

HOLD PUBLIC HEARING;

AND

FIND THE INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

ADOPT DRAFT MITIGATED NEGATIVE DECLARATION AND MITIGATING MONITORING PROGRAM AND FIND IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

FIND PLN2003-00261 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2003-00261, AS SHOWN ON EXHIBIT "A", COLORED ELEVATIONS AND MATERIAL SAMPLE BOARD AS SHOWN ON EXHIBIT "B" SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "C".

- Item 4. UNION STREET TOWNHOMES - 3536 Union Street - (PLN2005-00027)** – to consider a Vesting Tentative Tract Map 8644 and Private Street for a 12-lot subdivision with common area (currently three lots) for the construction of 12 townhome units in the Irvington Planning Area. A Mitigated Negative Declaration has been prepared and previously adopted for this project.

HOLD PUBLIC HEARING;

AND

FIND THE PREVIOUSLY APPROVED MITIGATED NEGATIVE DECLARATION WITH A CERTIFICATE OF FEE EXEMPTION ADDRESSES THE PROPOSED PROJECT AND NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FIND PLN2005-00027 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND PLN2005-00027, PER EXHIBIT "E" (TENTATIVE TRACT MAP 8644 AND PRIVATE STREET) AND; EXHIBIT "F" (FINDINGS AND CONDITIONS); FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND

APPROVE PLN2005-00027 IN CONFORMANCE WITH EXHIBIT "E" (TENTATIVE TRACT MAP 8644 AND PRIVATE STREET) AND; EXHIBIT "F" (FINDINGS AND CONDITIONS).

- Item 5. AMERICA'S TIRE COMPANY – 3850 Beacon Avenue – (PLN2005-00148)** - to consider a Finding for Site Plan and Architectural conformance for a 490 square foot addition to an existing commercial building located in the Central Planning Area. This project is categorically exempt from CEQA review under section 15303, New Construction or Conversion of Small Structures.

HOLD PUBLIC HEARING;

AND

FIND THE PROJECT CATEGORICALLY EXEMPT FROM CEQA, PER SECTION 15303 OF THE CEQA GUIDELINES AS THEY RELATE TO THE CONVERSION OR CONSTRUCTION OF SMALL STRUCTURES;

AND

FIND THAT THE PROPOSED PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S CENTRAL BUSINESS DISTRICT SECTION WITHIN THE LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2005-00148, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS IN EXHIBIT "B".

- Item 6. AUTOMALL COMMONS - Automall Parkway @ South Lake Common – (PLN2005-00167)** – to consider a General Plan Amendment and Rezoning of an approximately 0.94 acre parcel from Office Commercial to Residential Medium Density (15-18 dwelling units per acre), and from P-69-2 (Planned Development) District to R-3-18 (Multi-Family Residential) in the Irvington Planning Area. A mitigated negative declaration has been prepared and circulated for the project.

DUE TO AN ERROR IN NOTICING, CONTINUE TO JUNE 9, 2005.

- Item 7. ABOObAKER RESIDENCE – 2087 Rancho Higuera Court – (PLN2005-00202)** - to consider a minor amendment to an existing Planned District for a 455 sq. ft. addition and exterior remodel of an existing 7,246 sq. ft. (including 999 sq. ft. garage) single-family residence located in the Warm Springs Planning Area. This project is categorically exempt from CEQA per Section 15301; minor addition to an existing facility.

HOLD PUBLIC HEARING;

AND

FIND PROJECT IS EXEMPT FROM CEQA REVIEW, PER SECTION 15301(E); MINOR ADDITION TO EXISTING STRUCTURES;

AND

FIND PLN2005-00202 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THE PROJECT CONFORMS TO THE GOALS AND OBJECTIVES OF THE WARM SPRINGS PLANNING AREA;

AND

APPROVE PLN2005-00202, AS SHOWN ON EXHIBIT "A", SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "B"

- Item 8. HAVEN AVENUE – 41714 Fremont Boulevard and 3962-3860 Haven Avenue – (PLN2005-00291)** - to consider a General Plan Amendment and Rezoning of an approximately 1.55 acre area (eight lots on the south side of Haven Avenue in the Irvington Planning Area from Residential Medium Density (15-18 dwelling units per acre) to Low Density Residential (5-7 dwelling units per acre) and a corresponding rezoning from R-G-29

(Garden Apartment District) to R-1-6 (Single-Family Residential). This project is exempt from CEQA review under Section 15061(b)(3), no possibility of an impact on the environment.

HOLD PUBLIC HEARING;

AND

FIND THE PROPOSED PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO SECTION 15061 (B) (3) BECAUSE THERE IS NO POSSIBILITY OF AN IMPACT ON THE ENVIRONMENT IN THAT THE PROJECT WOULD REDUCE THE DEVELOPMENT POTENTIAL FOR THE PARCELS IN QUESTION;

AND

FIND THAT GENERAL PLAN AMENDMENT TO LOW DENSITY RESIDENTIAL (5-7 DWELLINGS PER ACRE) AND REZONING TO R-1-6 DISTRICT ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING ELEMENT CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

RECOMMEND TO COUNCIL APPROVAL OF PLN2005-00291 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION FOR THE PROJECT IN CONFORMANCE WITH EXHIBIT "A" (GENERAL PLAN AMENDMENT EXHIBIT) AND REZONE THE SITE AS PER EXHIBIT "B" (REZONING EXHIBIT) BASED UPON THE FINDINGS SET FORTH IN EXHIBIT "C".

Item 9. HOUSING ELEMENT PROGRAM 21 – to consider the following General Plan Amendment and Rezonings:

Site 1 (PLN2005-00080) consists of approximately 15.6 acres of land, located on the south side of Paseo Padre Parkway between Ardenwood Boulevard and Tupelo Street in the Northern Plain Planning Area. The proposed project would change the existing General Plan land use designation of the site from Community Commercial to a combination of Low Density Residential (5-7 dwellings per acre), Medium Density Residential (15-18 dwellings per acre) and High Density Residential (23-27 dwellings per acre). A rezoning of the site from the P-81-15W (Planned Development) District to P-2005-80 (Planned Development) District is also proposed. A Negative Declaration has been prepared and circulated for this project.

Site 2 (PLN2005-00217) consists of approximately 7.9 acres of land (11 parcels) on the west side of Osgood Road approximately 200 feet north of Blacow Road located in the Irvington Planning Area. The proposed project would change the General Plan land use designation from Light Industrial (IL) / Institutional Open Space to High Density Residential (23-27 dwellings per acre) / Institutional Open Space and Low Density Residential (5-7 dwellings per acre). A rezoning of the site from Light Industrial to the R-3-27 (Multi-family Residential) District / OS-FW (Open Space – Flood Way Combining) and the R-1-6 (Residential Single Family) District is also proposed. A Negative Declaration has been prepared and circulated for this project.

Site 4 (PLN2005-00076) consists of approximately 2.43 acres of land located on Mount Vernon Avenue between Mowry Avenue and Capitol Avenue in the Central planning area. The project includes a rezoning from P-2002-216 (Planned Development) District to P-2005-76 (Planned Development) District to allow residential development at a density of 70 units per acre above ground floor retail or service uses. A Negative Declaration has been prepared and circulated for this project.

- Item 10. HOUSING ELEMENT PROGRAM 21 (PLN2004-00275)** – to consider the General Plan Amendment and rezoning of approximately 4.73 acres of land (three parcels) located on the north side of Stevenson Boulevard just west of Mission Boulevard in the Central Planning Area. The project proposes to amend the General Plan land use designation from Commercial Office/Foot Trail to High Density Residential (23 to 27 dwellings per acre)/Foot Trail. A rezoning from P (Planned Development) District to the R-3-27 District (Multi-family Residential) District is also proposed. A Negative Declaration has been prepared and circulated for this project.

HOLD PUBLIC HEARING;

AND

RECOMMEND TO THE CITY COUNCIL THAT THE INITIAL STUDY CONDUCTED FOR PLN 2004-00275 HAS EVALUATED THE POTENTIAL IMPACTS FOR THE PROPOSED REDESIGNATION AND REZONING THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES, AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL ADVERSE EFFECT ON WILDLIFE RESOURCES BECAUSE THE SITE HAS BEEN ROUTINELY FARMED/USED TO RAISE CROPS AND/OR DEVELOPED WITH RESIDENTIAL BUILDINGS;

AND

RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF DRAFT MITIGATED NEGATIVE DECLARATION AND RESPONSES TO COMMENTS (IF APPLICABLE) FOR PLN2004-00275, WITH ACCOMPANYING CERTIFICATE OF FEE EXEMPTION FINDING THAT IT REFLECTS THE INDEPENDENT JUDGEMENT OF THE CITY OF FREMONT, AND FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT;

AND

RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF THE MITIGATION MONITORING AND REPORTING PROGRAM;

AND

FIND THAT GENERAL PLAN AMENDMENT TO HIGH DENSITY RESIDENTIAL (23-27 DWELLINGS PER ACRE) AND FOOT TRAIL AND REZONING TO R-3-27 (MULTI-FAMILY RESIDENTIAL) DISTRICT ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING ELEMENT CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

RECOMMEND THAT THE CITY COUNCIL APPROVE PLN2004-00275 TO AMEND THE GENERAL PLAN LAND USE DIAGRAM TO DESIGNATE THE SUBJECT SITE WITH A HIGH RESIDENTIAL LAND USE DESIGNATION OF 23 – 27 DWELLINGS PER ACRE AND FOOT TRAIL, AND REZONE IT TO R-3-27 DISTRICT IN CONFORMANCE WITH EXHIBITS "A" (GENERAL PLAN AMENDMENT) AND "B" (REZONING EXHIBIT).

The motion carried by the following vote:

AYES:	7 – Chan, Harrison, King, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- Item 1.** **SANDHU RESIDENCE – East King – (PLN2005-00058)** - to consider adoption of Findings and Conditions for a Conditional Use Permit and Preliminary Grading Plan for the development and use of a 16,214 square foot single-family residence located in the Hill Area of the Niles Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project.

Paul Kozachenko, representative, requested that this item be continued, because the interested parties needed more time to resolve some of the issues.

Commissioner Weaver asked that this item be continued to the second meeting in June, as she would not be present at the June 9th meeting.

IT WAS MOVED (WEAVER/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0) THAT THE PLANNING COMMISSION TO CONTINUE TO JUNE 9, 2005.

The motion carried by the following vote:

AYES:	7 – Chan, Harrison, King, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

- Item 3.** **BARRON RESIDENCE – 37004 & 37006 Mission Boulevard – (PLN2004-00324)** - to consider a Conditional Use Permit for the construction and use of a single family residential dwelling unit located on Mission Boulevard in the Hill face of the Niles Planning Area. This project is exempt from CEQA review under Section 21080(b) (5), projects which a public agency rejects or disapproves.

Chairperson Harrison opened the public hearing,

Ernesto Barron, applicant, stated that his project had been approved in 1981 for development at the top of the property, but no building had occurred. Sometime later, he submitted a plan for a residence at the top of the property and was given inaccurate information by the plan checker. When he submitted this plan in August 2004, he was informed that Emergency Vehicle Access was necessary to reach a home at that location. He then decided to construct a home at the bottom of the site. He hired a civil engineer regarding the toe of the hill line and to change the scale of the map for this property. On December 21st he met with staff to discuss the problems. He was told he needed to provide a soils study to determine the depth of the fill slope. He was also told that he had to provide a preliminary grading plan stamped by a Civil Engineer. He claimed that a preliminary grading plan was not needed for preliminary drawings. He stated that soil that had been filled in to provide access to a water tank that had been at the top of the property, which was the reason that the sidewalk stopped at his property. He claimed that because there was no sidewalk, the ADA requirements had not been met. He believed the grading plan and soils study that staff had required he submit did not have to be submitted until after approval of his design plan. He stated that he would provide a sidewalk, which would take care of the ADA, as federally mandated; he would grade the lower portion of the property similar to the property on one side of his property; and he would improve an empty lot that was being illegally used and was trash strewn. He stated that he was tired of spending so much money and being given incorrect information.

Chairperson Harrison asked how the approval in 1981 affected the applicant's rights or privileges.

Senior Deputy City Attorney Seto replied that the 1981 approval included taking access from an adjacent property. The applicant was unable to show that it was available at the present time. With that, and the passage of Measure T as well as Measure A, which changed the rules regarding development in the hill area, the type of development that was being proposed was restricted. The applicant had failed to obtain all of the permits and approvals needed for development after the 1981 approval and, now, the site was no longer available, based upon the submitted design.

Commissioner Sharma commented that it seemed the applicant had not fulfilled the conditions that everyone was required to do before coming before the Planning Commission for approval. Therefore, the application was not complete, whatever the other issues may be.

Planning Director Schwob stated that he was correct.

Commissioner Lydon asked if there were any rights or privileges as the result of an incomplete or incorrect proper assessment by the plan checker.

Planning Director Schwob stated that there were no rights associated with the situation as stated above.

Commissioner Chan asked that the applicant address the three items that staff had identified that had not been met.

Mr. Barron stated that a preliminary grading plan did not have to be signed by a Civil Engineer; only the final plan had to be signed by a Civil Engineer. Everything he was asked to do had been done, except for the soils report. He felt that he should not have to pay to have an engineer do the same study twice, once before approval and again after approval. The plan checker had been incorrect and according to Section 9421, he did not have to have EVA access if he had a 5,000-gallon water tank as part of his design. He claimed to have easement access, as was shown in the original submittal. He was not aware that he would have to obtain approval by the owners of the adjacent properties for grading until he had received his documents by mail. He believed that the adjacent owners should be forced to provide sidewalks, as was mandated by ADA.

Chairperson Harrison closed the public hearing.

Commissioner Weaver sympathized with the applicant. However, he had not been asked to do anything that was not asked of every other applicant. Unfortunately, he had not complied with all of the conditions that the Planning Department had laid out. The Commissioners had no choice but to deny his application.

Commissioner Sharma asked if construction was contingent upon the access.

Planning Director Schwob replied that the current proposal showed a home closer to Mission Boulevard. The original proposal was to develop on the top of the lot on the former water tank site. That proposal had been contingent upon gaining access through an adjoining property, which staff believed had not been formalized. Upon reviewing the title report for the adjacent lot, there was no easement. Therefore, that portion of the lot would be unavailable for development, along with the recent Measure T requirements. The current proposal showed grading at the base of the hill, which would be similar to the Papillion site. That grading had not occurred naturally in the past. The applicant had proposed to restore the grade to the condition of the adjoining lot. Staff was not certain what the original grade was and the 1956 topography maps looked similar to what existed today. Quarrying in this area had occurred previously, and it was doubtful that the current grade was, indeed, natural. Investigations and borings that would have shown how much fill or movement had occurred

were suggested to the applicant. However, the applicant did not want to have that analysis performed, which might have shown that it had been graded and, therefore, he would be retaining or restoring it to a natural grade. This proposal would require grading on steep slopes, which would also be an issue under Measure T. A final decision could not be made without the necessary documentation and information that would allow staff to review the proposal under Measure T.

Commissioner Chan asked for comment concerning the applicant's claim that he had not been aware that he had to provide written permission from the adjoining property owners about the grading until he had received his packet.

Planning Director Schwob believed the applicant would have been told either in one of staff's comment letters or orally during the meeting that was held concerning the current proposal. He would have to perform some grading on the adjoining properties and would need an easement to do so. If no grading was performed on the adjoining properties, a large retaining wall would have to be constructed, which, would be in conflict with the hill area policies. He recognized that the applicant had not proposed constructing high retaining walls; that would be the alternative to grading on adjacent properties.

Commissioner Lydon stated that deciding this issue that started 24 years ago made it difficult, at best. Very serious ingredients that would help to make any decision other than staff's recommendation were missing and any decision but the recommended action could put the property owner and the City in serious jeopardy.

IT WAS MOVED (SHARMA/LYDON) AND CARRIED BY THE FOLLOWING VOTE (7-0-0-0)
THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

AND

DENY THE APPLICATION ON ITS MERITS (BASED ON THE INFORMATION AND EXHIBITS IDENTIFIED IN THIS REPORT AND PRESENTED DURING THE PUBLIC HEARING).

The motion carried by the following vote:

AYES:	7 – Chan, Harrison, King, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	0
RECUSE:	0

Chairperson Harrison announced that the applicant had ten days to appeal the Planning Commission's decision with the City Clerk's office.

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Report on actions of City Council Regular Meetings

Planning Director Schwob reported:

- The City Council adopted an Urgency Ordinance regulating the demolition of structures that were 50 years or older. In this case, all demolition requests would be treated as projects under the CEQA. This would be part of a larger, more comprehensive ordinance for historic preservation that would be worked on during the upcoming year.

- The Santos Barn now had a permanent home on the Shinn property.

Commissioner Lorenz asked if there had been a reason for the Urgency Ordinance.

Planning Director Schwob replied that staff had feared that there would be a rush for demolition of possible historic buildings. This was the next step in the process of the Historic Preservation Ordinance and was the beginning of “the teeth” that needed to be a part of the ordinance. The Council also had directed staff to complete the identification of the 200 properties not identified out of 300 original potential properties, of which 100 had been identified as Historic Resources. If property owners proceeded with development prior to the finish of the identification, the city would have to perform the evaluation, if the building met the basic test criteria under State and Federal law.

Commissioner Sharma asked if someone bought a property with a structure that was more than 50 years old, would there be different conditions in place than before this ordinance.

Planning Director Schwob stated that a review would be required, but it did not mean that the process would be different. The demolition permits issued over the last several months had been reviewed, and it was decided to require photos and other information from the applicants to allow staff to assess the structure under CEQA. If a structure potentially met the criteria, the structure would be formally evaluated.

- Information from Commission: Commission members may report on matters of interest.

Chairperson Harrison stated that the owner of the office complex next to the car wash had told him that he had not received a notice and that half the tenants had not received one, either. He asked if there was a mechanism to be certain the actual owner of the property was noticed.

Planning Director Schwob replied that property owners, regardless of where they lived or had their businesses, were notified. The notices were based upon the Assessor’s records and if the property owner had moved, it was possible that the notice may not have reached him.

Meeting adjourned at 8:50 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte
Recording Clerk

Jeff Schwob, Secretary
Planning Commission